



Sen. Susan Garrett

Filed: 2/27/2006

09400SB2326sam001

LRB094 18573 DRJ 56703 a

1 AMENDMENT TO SENATE BILL 2326

2 AMENDMENT NO. _____. Amend Senate Bill 2326 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Open Meetings Act is amended by changing
5 Section 2 as follows:

6 (5 ILCS 120/2) (from Ch. 102, par. 42)

7 Sec. 2. Open meetings.

8 (a) Openness required. All meetings of public bodies shall
9 be open to the public unless excepted in subsection (c) and
10 closed in accordance with Section 2a.

11 (b) Construction of exceptions. The exceptions contained
12 in subsection (c) are in derogation of the requirement that
13 public bodies meet in the open, and therefore, the exceptions
14 are to be strictly construed, extending only to subjects
15 clearly within their scope. The exceptions authorize but do not
16 require the holding of a closed meeting to discuss a subject
17 included within an enumerated exception.

18 (c) Exceptions. A public body may hold closed meetings to
19 consider the following subjects:

20 (1) The appointment, employment, compensation,
21 discipline, performance, or dismissal of specific
22 employees of the public body or legal counsel for the
23 public body, including hearing testimony on a complaint
24 lodged against an employee of the public body or against

1 legal counsel for the public body to determine its
2 validity.

3 (2) Collective negotiating matters between the public
4 body and its employees or their representatives, or
5 deliberations concerning salary schedules for one or more
6 classes of employees.

7 (3) The selection of a person to fill a public office,
8 as defined in this Act, including a vacancy in a public
9 office, when the public body is given power to appoint
10 under law or ordinance, or the discipline, performance or
11 removal of the occupant of a public office, when the public
12 body is given power to remove the occupant under law or
13 ordinance.

14 (4) Evidence or testimony presented in open hearing, or
15 in closed hearing where specifically authorized by law, to
16 a quasi-adjudicative body, as defined in this Act, provided
17 that the body prepares and makes available for public
18 inspection a written decision setting forth its
19 determinative reasoning.

20 (5) The purchase or lease of real property for the use
21 of the public body, including meetings held for the purpose
22 of discussing whether a particular parcel should be
23 acquired.

24 (6) The setting of a price for sale or lease of
25 property owned by the public body.

26 (7) The sale or purchase of securities, investments, or
27 investment contracts.

28 (8) Security procedures and the use of personnel and
29 equipment to respond to an actual, a threatened, or a
30 reasonably potential danger to the safety of employees,
31 students, staff, the public, or public property.

32 (9) Student disciplinary cases.

33 (10) The placement of individual students in special
34 education programs and other matters relating to

1 individual students.

2 (11) Litigation, when an action against, affecting or
3 on behalf of the particular public body has been filed and
4 is pending before a court or administrative tribunal, or
5 when the public body finds that an action is probable or
6 imminent, in which case the basis for the finding shall be
7 recorded and entered into the minutes of the closed
8 meeting.

9 (12) The establishment of reserves or settlement of
10 claims as provided in the Local Governmental and
11 Governmental Employees Tort Immunity Act, if otherwise the
12 disposition of a claim or potential claim might be
13 prejudiced, or the review or discussion of claims, loss or
14 risk management information, records, data, advice or
15 communications from or with respect to any insurer of the
16 public body or any intergovernmental risk management
17 association or self insurance pool of which the public body
18 is a member.

19 (13) Conciliation of complaints of discrimination in
20 the sale or rental of housing, when closed meetings are
21 authorized by the law or ordinance prescribing fair housing
22 practices and creating a commission or administrative
23 agency for their enforcement.

24 (14) Informant sources, the hiring or assignment of
25 undercover personnel or equipment, or ongoing, prior or
26 future criminal investigations, when discussed by a public
27 body with criminal investigatory responsibilities.

28 (15) Professional ethics or performance when
29 considered by an advisory body appointed to advise a
30 licensing or regulatory agency on matters germane to the
31 advisory body's field of competence.

32 (16) Self evaluation, practices and procedures or
33 professional ethics, when meeting with a representative of
34 a statewide association of which the public body is a

1 member.

2 (17) The recruitment, credentialing, discipline or
3 formal peer review of physicians or other health care
4 professionals for a hospital, or other institution
5 providing medical care, that is operated by the public
6 body.

7 (18) Deliberations for decisions of the Prisoner
8 Review Board.

9 (19) Review or discussion of applications received
10 under the Experimental Organ Transplantation Procedures
11 Act.

12 (20) The classification and discussion of matters
13 classified as confidential or continued confidential by
14 the State Employees Suggestion Award Board.

15 (21) Discussion of minutes of meetings lawfully closed
16 under this Act, whether for purposes of approval by the
17 body of the minutes or semi-annual review of the minutes as
18 mandated by Section 2.06.

19 (22) Deliberations for decisions of the State
20 Emergency Medical Services Disciplinary Review Board.

21 (23) The operation by a municipality of a municipal
22 utility or the operation of a municipal power agency or
23 municipal natural gas agency when the discussion involves
24 (i) contracts relating to the purchase, sale, or delivery
25 of electricity or natural gas or (ii) the results or
26 conclusions of load forecast studies.

27 (24) Meetings of a residential health care facility
28 resident sexual assault and death review team or the
29 ~~Residential Health Care Facility Resident Sexual Assault~~
30 ~~and Death Review Teams~~ Executive Council under the Abuse
31 Prevention Residential Health Care Facility Resident
32 ~~Sexual Assault and Death~~ Review Team Act.

33 (d) Definitions. For purposes of this Section:

34 "Employee" means a person employed by a public body whose

1 relationship with the public body constitutes an
2 employer-employee relationship under the usual common law
3 rules, and who is not an independent contractor.

4 "Public office" means a position created by or under the
5 Constitution or laws of this State, the occupant of which is
6 charged with the exercise of some portion of the sovereign
7 power of this State. The term "public office" shall include
8 members of the public body, but it shall not include
9 organizational positions filled by members thereof, whether
10 established by law or by a public body itself, that exist to
11 assist the body in the conduct of its business.

12 "Quasi-adjudicative body" means an administrative body
13 charged by law or ordinance with the responsibility to conduct
14 hearings, receive evidence or testimony and make
15 determinations based thereon, but does not include local
16 electoral boards when such bodies are considering petition
17 challenges.

18 (e) Final action. No final action may be taken at a closed
19 meeting. Final action shall be preceded by a public recital of
20 the nature of the matter being considered and other information
21 that will inform the public of the business being conducted.

22 (Source: P.A. 93-57, eff. 7-1-03; 93-79, eff. 7-2-03; 93-422,
23 eff. 8-5-03; 93-577, eff. 8-21-03; revised 9-8-03.)

24 Section 10. The Freedom of Information Act is amended by
25 changing Section 7 as follows:

26 (5 ILCS 140/7) (from Ch. 116, par. 207)

27 Sec. 7. Exemptions.

28 (1) The following shall be exempt from inspection and
29 copying:

30 (a) Information specifically prohibited from
31 disclosure by federal or State law or rules and regulations
32 adopted under federal or State law.

1 (b) Information that, if disclosed, would constitute a
2 clearly unwarranted invasion of personal privacy, unless
3 the disclosure is consented to in writing by the individual
4 subjects of the information. The disclosure of information
5 that bears on the public duties of public employees and
6 officials shall not be considered an invasion of personal
7 privacy. Information exempted under this subsection (b)
8 shall include but is not limited to:

9 (i) files and personal information maintained with
10 respect to clients, patients, residents, students or
11 other individuals receiving social, medical,
12 educational, vocational, financial, supervisory or
13 custodial care or services directly or indirectly from
14 federal agencies or public bodies;

15 (ii) personnel files and personal information
16 maintained with respect to employees, appointees or
17 elected officials of any public body or applicants for
18 those positions;

19 (iii) files and personal information maintained
20 with respect to any applicant, registrant or licensee
21 by any public body cooperating with or engaged in
22 professional or occupational registration, licensure
23 or discipline;

24 (iv) information required of any taxpayer in
25 connection with the assessment or collection of any tax
26 unless disclosure is otherwise required by State
27 statute;

28 (v) information revealing the identity of persons
29 who file complaints with or provide information to
30 administrative, investigative, law enforcement or
31 penal agencies; provided, however, that identification
32 of witnesses to traffic accidents, traffic accident
33 reports, and rescue reports may be provided by agencies
34 of local government, except in a case for which a

1 criminal investigation is ongoing, without
2 constituting a clearly unwarranted per se invasion of
3 personal privacy under this subsection; and

4 (vi) the names, addresses, or other personal
5 information of participants and registrants in park
6 district, forest preserve district, and conservation
7 district programs.

8 (c) Records compiled by any public body for
9 administrative enforcement proceedings and any law
10 enforcement or correctional agency for law enforcement
11 purposes or for internal matters of a public body, but only
12 to the extent that disclosure would:

13 (i) interfere with pending or actually and
14 reasonably contemplated law enforcement proceedings
15 conducted by any law enforcement or correctional
16 agency;

17 (ii) interfere with pending administrative
18 enforcement proceedings conducted by any public body;

19 (iii) deprive a person of a fair trial or an
20 impartial hearing;

21 (iv) unavoidably disclose the identity of a
22 confidential source or confidential information
23 furnished only by the confidential source;

24 (v) disclose unique or specialized investigative
25 techniques other than those generally used and known or
26 disclose internal documents of correctional agencies
27 related to detection, observation or investigation of
28 incidents of crime or misconduct;

29 (vi) constitute an invasion of personal privacy
30 under subsection (b) of this Section;

31 (vii) endanger the life or physical safety of law
32 enforcement personnel or any other person; or

33 (viii) obstruct an ongoing criminal investigation.

34 (d) Criminal history record information maintained by

1 State or local criminal justice agencies, except the
2 following which shall be open for public inspection and
3 copying:

4 (i) chronologically maintained arrest information,
5 such as traditional arrest logs or blotters;

6 (ii) the name of a person in the custody of a law
7 enforcement agency and the charges for which that
8 person is being held;

9 (iii) court records that are public;

10 (iv) records that are otherwise available under
11 State or local law; or

12 (v) records in which the requesting party is the
13 individual identified, except as provided under part
14 (vii) of paragraph (c) of subsection (1) of this
15 Section.

16 "Criminal history record information" means data
17 identifiable to an individual and consisting of
18 descriptions or notations of arrests, detentions,
19 indictments, informations, pre-trial proceedings, trials,
20 or other formal events in the criminal justice system or
21 descriptions or notations of criminal charges (including
22 criminal violations of local municipal ordinances) and the
23 nature of any disposition arising therefrom, including
24 sentencing, court or correctional supervision,
25 rehabilitation and release. The term does not apply to
26 statistical records and reports in which individuals are
27 not identified and from which their identities are not
28 ascertainable, or to information that is for criminal
29 investigative or intelligence purposes.

30 (e) Records that relate to or affect the security of
31 correctional institutions and detention facilities.

32 (f) Preliminary drafts, notes, recommendations,
33 memoranda and other records in which opinions are
34 expressed, or policies or actions are formulated, except

1 that a specific record or relevant portion of a record
2 shall not be exempt when the record is publicly cited and
3 identified by the head of the public body. The exemption
4 provided in this paragraph (f) extends to all those records
5 of officers and agencies of the General Assembly that
6 pertain to the preparation of legislative documents.

7 (g) Trade secrets and commercial or financial
8 information obtained from a person or business where the
9 trade secrets or information are proprietary, privileged
10 or confidential, or where disclosure of the trade secrets
11 or information may cause competitive harm, including:

12 (i) All information determined to be confidential
13 under Section 4002 of the Technology Advancement and
14 Development Act.

15 (ii) All trade secrets and commercial or financial
16 information obtained by a public body, including a
17 public pension fund, from a private equity fund or a
18 privately held company within the investment portfolio
19 of a private equity fund as a result of either
20 investing or evaluating a potential investment of
21 public funds in a private equity fund. The exemption
22 contained in this item does not apply to the aggregate
23 financial performance information of a private equity
24 fund, nor to the identity of the fund's managers or
25 general partners. The exemption contained in this item
26 does not apply to the identity of a privately held
27 company within the investment portfolio of a private
28 equity fund, unless the disclosure of the identity of a
29 privately held company may cause competitive harm.

30 Nothing contained in this paragraph (g) shall be construed
31 to prevent a person or business from consenting to disclosure.

32 (h) Proposals and bids for any contract, grant, or
33 agreement, including information which if it were
34 disclosed would frustrate procurement or give an advantage

1 to any person proposing to enter into a contractor
2 agreement with the body, until an award or final selection
3 is made. Information prepared by or for the body in
4 preparation of a bid solicitation shall be exempt until an
5 award or final selection is made.

6 (i) Valuable formulae, computer geographic systems,
7 designs, drawings and research data obtained or produced by
8 any public body when disclosure could reasonably be
9 expected to produce private gain or public loss. The
10 exemption for "computer geographic systems" provided in
11 this paragraph (i) does not extend to requests made by news
12 media as defined in Section 2 of this Act when the
13 requested information is not otherwise exempt and the only
14 purpose of the request is to access and disseminate
15 information regarding the health, safety, welfare, or
16 legal rights of the general public.

17 (j) Test questions, scoring keys and other examination
18 data used to administer an academic examination or
19 determined the qualifications of an applicant for a license
20 or employment.

21 (k) Architects' plans, engineers' technical
22 submissions, and other construction related technical
23 documents for projects not constructed or developed in
24 whole or in part with public funds and the same for
25 projects constructed or developed with public funds, but
26 only to the extent that disclosure would compromise
27 security, including but not limited to water treatment
28 facilities, airport facilities, sport stadiums, convention
29 centers, and all government owned, operated, or occupied
30 buildings.

31 (l) Library circulation and order records identifying
32 library users with specific materials.

33 (m) Minutes of meetings of public bodies closed to the
34 public as provided in the Open Meetings Act until the

1 public body makes the minutes available to the public under
2 Section 2.06 of the Open Meetings Act.

3 (n) Communications between a public body and an
4 attorney or auditor representing the public body that would
5 not be subject to discovery in litigation, and materials
6 prepared or compiled by or for a public body in
7 anticipation of a criminal, civil or administrative
8 proceeding upon the request of an attorney advising the
9 public body, and materials prepared or compiled with
10 respect to internal audits of public bodies.

11 (o) Information received by a primary or secondary
12 school, college or university under its procedures for the
13 evaluation of faculty members by their academic peers.

14 (p) Administrative or technical information associated
15 with automated data processing operations, including but
16 not limited to software, operating protocols, computer
17 program abstracts, file layouts, source listings, object
18 modules, load modules, user guides, documentation
19 pertaining to all logical and physical design of
20 computerized systems, employee manuals, and any other
21 information that, if disclosed, would jeopardize the
22 security of the system or its data or the security of
23 materials exempt under this Section.

24 (q) Documents or materials relating to collective
25 negotiating matters between public bodies and their
26 employees or representatives, except that any final
27 contract or agreement shall be subject to inspection and
28 copying.

29 (r) Drafts, notes, recommendations and memoranda
30 pertaining to the financing and marketing transactions of
31 the public body. The records of ownership, registration,
32 transfer, and exchange of municipal debt obligations, and
33 of persons to whom payment with respect to these
34 obligations is made.

1 (s) The records, documents and information relating to
2 real estate purchase negotiations until those negotiations
3 have been completed or otherwise terminated. With regard to
4 a parcel involved in a pending or actually and reasonably
5 contemplated eminent domain proceeding under Article VII
6 of the Code of Civil Procedure, records, documents and
7 information relating to that parcel shall be exempt except
8 as may be allowed under discovery rules adopted by the
9 Illinois Supreme Court. The records, documents and
10 information relating to a real estate sale shall be exempt
11 until a sale is consummated.

12 (t) Any and all proprietary information and records
13 related to the operation of an intergovernmental risk
14 management association or self-insurance pool or jointly
15 self-administered health and accident cooperative or pool.

16 (u) Information concerning a university's adjudication
17 of student or employee grievance or disciplinary cases, to
18 the extent that disclosure would reveal the identity of the
19 student or employee and information concerning any public
20 body's adjudication of student or employee grievances or
21 disciplinary cases, except for the final outcome of the
22 cases.

23 (v) Course materials or research materials used by
24 faculty members.

25 (w) Information related solely to the internal
26 personnel rules and practices of a public body.

27 (x) Information contained in or related to
28 examination, operating, or condition reports prepared by,
29 on behalf of, or for the use of a public body responsible
30 for the regulation or supervision of financial
31 institutions or insurance companies, unless disclosure is
32 otherwise required by State law.

33 (y) Information the disclosure of which is restricted
34 under Section 5-108 of the Public Utilities Act.

1 (z) Manuals or instruction to staff that relate to
2 establishment or collection of liability for any State tax
3 or that relate to investigations by a public body to
4 determine violation of any criminal law.

5 (aa) Applications, related documents, and medical
6 records received by the Experimental Organ Transplantation
7 Procedures Board and any and all documents or other records
8 prepared by the Experimental Organ Transplantation
9 Procedures Board or its staff relating to applications it
10 has received.

11 (bb) Insurance or self insurance (including any
12 intergovernmental risk management association or self
13 insurance pool) claims, loss or risk management
14 information, records, data, advice or communications.

15 (cc) Information and records held by the Department of
16 Public Health and its authorized representatives relating
17 to known or suspected cases of sexually transmissible
18 disease or any information the disclosure of which is
19 restricted under the Illinois Sexually Transmissible
20 Disease Control Act.

21 (dd) Information the disclosure of which is exempted
22 under Section 30 of the Radon Industry Licensing Act.

23 (ee) Firm performance evaluations under Section 55 of
24 the Architectural, Engineering, and Land Surveying
25 Qualifications Based Selection Act.

26 (ff) Security portions of system safety program plans,
27 investigation reports, surveys, schedules, lists, data, or
28 information compiled, collected, or prepared by or for the
29 Regional Transportation Authority under Section 2.11 of
30 the Regional Transportation Authority Act or the St. Clair
31 County Transit District under the Bi-State Transit Safety
32 Act.

33 (gg) Information the disclosure of which is restricted
34 and exempted under Section 50 of the Illinois Prepaid

1 Tuition Act.

2 (hh) Information the disclosure of which is exempted
3 under the State Officials and Employees Ethics Act.

4 (ii) Beginning July 1, 1999, information that would
5 disclose or might lead to the disclosure of secret or
6 confidential information, codes, algorithms, programs, or
7 private keys intended to be used to create electronic or
8 digital signatures under the Electronic Commerce Security
9 Act.

10 (jj) Information contained in a local emergency energy
11 plan submitted to a municipality in accordance with a local
12 emergency energy plan ordinance that is adopted under
13 Section 11-21.5-5 of the Illinois Municipal Code.

14 (kk) Information and data concerning the distribution
15 of surcharge moneys collected and remitted by wireless
16 carriers under the Wireless Emergency Telephone Safety
17 Act.

18 (ll) Vulnerability assessments, security measures, and
19 response policies or plans that are designed to identify,
20 prevent, or respond to potential attacks upon a community's
21 population or systems, facilities, or installations, the
22 destruction or contamination of which would constitute a
23 clear and present danger to the health or safety of the
24 community, but only to the extent that disclosure could
25 reasonably be expected to jeopardize the effectiveness of
26 the measures or the safety of the personnel who implement
27 them or the public. Information exempt under this item may
28 include such things as details pertaining to the
29 mobilization or deployment of personnel or equipment, to
30 the operation of communication systems or protocols, or to
31 tactical operations.

32 (mm) Maps and other records regarding the location or
33 security of a utility's generation, transmission,
34 distribution, storage, gathering, treatment, or switching

1 facilities.

2 (nn) Law enforcement officer identification
3 information or driver identification information compiled
4 by a law enforcement agency or the Department of
5 Transportation under Section 11-212 of the Illinois
6 Vehicle Code.

7 (oo) Records and information provided to a residential
8 health care facility resident sexual assault and death
9 review team or the ~~Residential Health Care Facility
10 Resident Sexual Assault and Death Review Teams~~ Executive
11 Council under the Abuse Prevention Residential Health Care
12 Facility Resident Sexual Assault and Death Review Team Act.

13 (pp) Information provided to the predatory lending
14 database created pursuant to Article 3 of the Residential
15 Real Property Disclosure Act, except to the extent
16 authorized under that Article.

17 (qq) ~~(pp)~~ Defense budgets and petitions for
18 certification of compensation and expenses for court
19 appointed trial counsel as provided under Sections 10 and
20 15 of the Capital Crimes Litigation Act. This subsection
21 (qq) ~~(pp)~~ shall apply until the conclusion of the trial and
22 appeal of the case, even if the prosecution chooses not to
23 pursue the death penalty prior to trial or sentencing.

24 (2) This Section does not authorize withholding of
25 information or limit the availability of records to the public,
26 except as stated in this Section or otherwise provided in this
27 Act.

28 (Source: P.A. 93-43, eff. 7-1-03; 93-209, eff. 7-18-03; 93-237,
29 eff. 7-22-03; 93-325, eff. 7-23-03, 93-422, eff. 8-5-03;
30 93-577, eff. 8-21-03; 93-617, eff. 12-9-03; 94-280, eff.
31 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; revised
32 8-29-05.)

33 Section 15. The Abuse Prevention Review Team Act is amended

1 by changing Sections 5, 15, 20, 25, and 40 and by adding
2 Sections 45 and 50 as follows:

3 (210 ILCS 28/5)

4 (Section scheduled to be repealed on July 1, 2006)

5 Sec. 5. State policy. The following statements are the
6 policy of this State:

7 (1) Every nursing home resident is entitled to live in
8 safety and decency and to receive competent and respectful
9 care that meets the requirements of State and federal law.

10 (2) Responding to sexual assaults of ~~on~~ nursing home
11 residents and to unnecessary nursing home resident deaths
12 is a State and a community responsibility.

13 (3) When a nursing home resident is sexually assaulted
14 or dies unnecessarily, the response by the State and the
15 community to the assault or death must include an accurate
16 and complete determination of the cause of the assault or
17 death and the development and implementation of measures to
18 prevent future assaults or deaths from similar causes. The
19 response may include court action, including prosecution
20 of persons who may be responsible for the assault or death
21 and proceedings to protect other residents of the facility
22 where the resident lived, and disciplinary action against
23 persons who failed to meet their professional
24 responsibilities to the resident.

25 (4) Professionals from disparate disciplines and
26 agencies who have responsibilities for nursing home
27 residents and expertise that can promote resident safety
28 and well-being should share their expertise and knowledge
29 so that the goals of determining the causes of sexual
30 assaults and unnecessary resident deaths, planning and
31 providing services to surviving residents, and preventing
32 future assaults and unnecessary deaths can be achieved.

33 (5) A greater understanding of the incidence and causes

1 of sexual assaults against nursing home residents and
2 unnecessary nursing home resident deaths is necessary if
3 the State is to prevent future assaults and unnecessary
4 deaths.

5 (6) Multi-disciplinary and multi-agency reviews of
6 sexual assaults against nursing home residents and
7 unnecessary nursing home resident deaths can assist the
8 State and counties in (i) investigating resident sexual
9 assaults and deaths, (ii) developing a greater
10 understanding of the incidence and causes of resident
11 sexual assault and deaths and the methods for preventing
12 those assaults and deaths, and (iii) identifying gaps in
13 services to nursing home residents.

14 (7) Access to information regarding assaulted and
15 deceased nursing home residents by multi-disciplinary and
16 multi-agency nursing home resident sexual assault and
17 death review teams is necessary for those teams to fulfill
18 ~~achieve~~ their purposes and duties.

19 (Source: P.A. 93-577, eff. 8-21-03.)

20 (210 ILCS 28/15)

21 (Section scheduled to be repealed on July 1, 2006)

22 Sec. 15. Residential health care facility resident sexual
23 assault and death review teams; establishment.

24 (a) The Director, in consultation with the Executive
25 Council and with law enforcement agencies and other
26 professionals who work in the field of investigating, treating,
27 or preventing nursing home resident abuse or neglect in ~~each of~~
28 ~~the Department's administrative regions of~~ the State, shall
29 appoint members to a residential health care facility resident
30 sexual assault and death review team ~~in each such region~~
31 ~~outside Cook County and to at least one review team in Cook~~
32 ~~County.~~ The Director shall appoint more teams if the Director
33 or the existing teams determine that more teams are necessary

1 to achieve the purposes of this Act. An Executive Council shall
2 be organized no later than when at least 4 teams are formed.

3 The members of a team shall be appointed for 2-year staggered
4 terms and shall be eligible for reappointment upon the
5 expiration of their terms.

6 (b) Each review team shall consist of at least one member
7 from each of the following categories:

8 (1) Geriatrician or other physician knowledgeable
9 about nursing home resident abuse and neglect.

10 (2) Representative of the Department.

11 (3) State's Attorney or State's Attorney's
12 representative.

13 (4) Representative of a local law enforcement agency.

14 (5) Representative of the Illinois Attorney General.

15 (6) Psychologist or psychiatrist.

16 (7) Representative of a local health department.

17 (8) Representative of a social service or health care
18 agency that provides services to persons with mental
19 illness, in a program whose accreditation to provide such
20 services is recognized by the Office of Mental Health
21 within the Department of Human Services.

22 (9) Representative of a social service or health care
23 agency that provides services to persons with
24 developmental disabilities, in a program whose
25 accreditation to provide such services is recognized by the
26 Office of Developmental Disabilities within the Department
27 of Human Services.

28 (10) Coroner or forensic pathologist.

29 (11) Representative of the local sub-state ombudsman.

30 (12) Representative of a nursing home resident
31 advocacy organization.

32 (13) Representative of a local hospital, trauma
33 center, or provider of emergency medical services.

34 (14) Representative of an organization that represents

1 nursing homes.

2 Each review team may make recommendations to the Director
3 concerning additional appointments. Each review team member
4 must have demonstrated experience and an interest in
5 investigating, treating, or preventing nursing home resident
6 abuse or neglect.

7 (c) Each review team shall select a chairperson from among
8 its members. The chairperson shall also serve on the Illinois
9 Residential Health Care Facility Sexual Assault and Death
10 Review Teams Executive Council.

11 (Source: P.A. 93-577, eff. 8-21-03.)

12 (210 ILCS 28/20)

13 (Section scheduled to be repealed on July 1, 2006)

14 Sec. 20. Reviews of nursing home resident sexual assaults
15 and deaths.

16 (a) Every ~~reported~~ case of sexual assault of a nursing home
17 resident that the Department determined to be valid ~~is~~
18 ~~confirmed~~ shall be reviewed by the review team for the region
19 that has primary case management responsibility.

20 (b) Every death of a nursing home resident shall be
21 reviewed by the review team for the region that has primary
22 case management responsibility, if the deceased resident is one
23 of the following:

24 (1) A person whose death is reviewed by the Department
25 during any regulatory activity, whether or not there were
26 any federal or State violations ~~care the Department found~~
27 ~~violated federal or State standards in the 6 months~~
28 ~~preceding the resident's death.~~

29 (2) A person about whose care the Department received a
30 complaint alleging that the resident's care violated
31 federal or State standards so as to contribute to the
32 resident's death. ~~A person whose care was the subject of a~~
33 ~~complaint to the Department in the 30 days preceding the~~

1 ~~resident's death, or after the resident's death.~~

2 (3) A resident whose death is referred to the
3 Department for investigation by a local coroner, medical
4 examiner, or law enforcement agency.

5 A review team may, at its discretion, review other sudden,
6 unexpected, or unexplained nursing home resident deaths. The
7 Department shall bring such deaths to the attention of the
8 teams when it determines that doing so will help to achieve to
9 purposes of this Act.

10 (c) ~~(b)~~ A review team's purpose in conducting reviews of
11 resident sexual assaults and deaths is to do the following:

12 (1) Assist in determining the cause and manner of the
13 resident's assault or death, when requested.

14 (2) Evaluate means, if any, by which the assault or
15 death might have been prevented.

16 (3) Report its findings to the Director ~~appropriate~~
17 ~~agencies~~ and make recommendations that may help to reduce
18 the number of sexual assaults on and unnecessary deaths of
19 nursing home residents.

20 (4) Promote continuing education for professionals
21 involved in investigating, treating, and preventing
22 nursing home resident abuse and neglect as a means of
23 preventing sexual assaults and unnecessary deaths of
24 nursing home residents.

25 (5) Make specific recommendations to the Director
26 concerning the prevention of sexual assaults and
27 unnecessary deaths of nursing home residents and the
28 establishment of protocols for investigating resident
29 sexual assaults and deaths.

30 (d) ~~(e)~~ A review team must review the ~~a~~ sexual assault or
31 death cases submitted to it on a quarterly basis. The ~~as soon~~
32 ~~as practicable and not later than 90 days following the~~
33 ~~completion by the Department of the investigation of the~~
34 ~~assault or death under the Nursing Home Care Act. When there~~

1 ~~has been no investigation by the Department, the review team~~
2 ~~must review a sexual assault or death within 90 days after~~
3 ~~obtaining the information necessary to complete the review from~~
4 ~~the coroner, pathologist, medical examiner, or law enforcement~~
5 ~~agency, depending on the nature of the case. A review team must~~
6 meet at least once in each calendar quarter if there are cases
7 to be reviewed. The Department shall forward cases pursuant to
8 subsections (a) and (b) of this Section within 120 days after
9 completion of the investigation.

10 (e) ~~(d)~~ Within 90 days after receiving recommendations made
11 by a review team under item (5) of subsection (c) ~~(b)~~, the
12 Director must review those recommendations and respond to the
13 review team. The Director shall implement recommendations as
14 feasible and appropriate and shall respond to the review team
15 in writing to explain the implementation or nonimplementation
16 of the recommendations.

17 (f) ~~(e)~~ In any instance when a review team does not operate
18 in accordance with established protocol, the Director, in
19 consultation and cooperation with the Executive Council, must
20 take any necessary actions to bring the review team into
21 compliance with the protocol.

22 (Source: P.A. 93-577, eff. 8-21-03.)

23 (210 ILCS 28/25)

24 (Section scheduled to be repealed on July 1, 2006)

25 Sec. 25. Review team access to information.

26 (a) The Department shall provide to a review team, on the
27 request of the review team chairperson, all records and
28 information in the Department's possession that are relevant to
29 the review team's review of a sexual assault or death described
30 in subsection (b) of Section 20, including records and
31 information concerning previous reports or investigations of
32 suspected abuse or neglect.

33 (b) A review team shall have access to all records and

1 information that are relevant to its review of a sexual assault
2 or death and in the possession of a State or local governmental
3 agency. These records and information include, without
4 limitation, death certificates, all relevant medical and
5 mental health records, records of law enforcement agency
6 investigations, records of coroner or medical examiner
7 investigations, records of the Department of Corrections
8 concerning a person's parole, records of a probation and court
9 services department, and records of a social services agency
10 that provided services to the resident.

11 (Source: P.A. 93-577, eff. 8-21-03.)

12 (210 ILCS 28/40)

13 (Section scheduled to be repealed on July 1, 2006)

14 Sec. 40. Executive Council.

15 (a) The Illinois Residential Health Care Facility Resident
16 Sexual Assault and Death Review Teams Executive Council,
17 consisting of the chairperson of each review team established
18 under Section 15, is the coordinating and oversight body for
19 residential health care facility resident sexual assault and
20 death review teams and activities in Illinois. The
21 vice-chairperson of a review team, as designated by the
22 chairperson, may serve as a back-up member or an alternate
23 member of the Executive Council, if the chairperson of the
24 review team is unavailable to serve on the Executive Council.
25 The Director may appoint to the Executive Council any
26 ex-officio members deemed necessary. Persons with expertise
27 needed by the Executive Council may be invited to meetings. The
28 Executive Council must select from its members a chairperson
29 and a vice-chairperson, each to serve a 2-year, renewable term.
30 The Executive Council must meet at least 4 times during each
31 calendar year if there is business to discuss.

32 (b) The Department must provide or arrange for the staff
33 support necessary for the review teams and Executive Council to

1 assist them in carrying ~~carry~~ out their ~~its~~ duties.

2 (c) The Executive Council has, but is not limited to, the
3 following duties:

4 (1) To request assistance from the Department as needed
5 ~~serve as the voice of review teams in Illinois.~~

6 (2) To consult with the Director concerning the
7 appointment, reappointment, and removal of review team
8 members.

9 (3) To ~~oversee the review teams in order to~~ ensure that
10 the teams' work is coordinated and in compliance with the
11 statutes and the operating protocol.

12 (4) To ensure that the data, results, findings, and
13 recommendations of the review teams are adequately used to
14 make any necessary changes in the policies, procedures, and
15 statutes in order to protect nursing home residents in a
16 timely manner.

17 (5) To collaborate with ~~the General Assembly,~~ the
18 Department, ~~and others~~ in order to develop any legislation
19 needed to prevent nursing home resident sexual assaults and
20 unnecessary deaths and to protect nursing home residents.

21 (6) To assist in the development of an ~~quarterly and~~
22 annual report ~~reports~~ based on the work and the findings of
23 the review teams.

24 (7) To ensure that the review teams' review processes
25 are standardized in order to convey data, findings, and
26 recommendations in a usable format.

27 (8) To serve as a link with other review teams
28 throughout the country and to participate in national
29 review team activities.

30 (9) To provide for training ~~develop an annual statewide~~
31 ~~symposium~~ to update the knowledge and skills of review team
32 members and to promote the exchange of information between
33 review teams.

34 (10) To provide the review teams with the most current

1 information and practices concerning nursing home resident
2 sexual assault and unnecessary death review and related
3 topics.

4 (11) To perform any other functions necessary to
5 enhance the capability of the review teams to reduce and
6 prevent sexual assaults and unnecessary deaths of nursing
7 home residents.

8 (d) Until an Executive Council is formed, the Department
9 shall assist the review teams in performing the duties
10 described in subsection (c).

11 (Source: P.A. 93-577, eff. 8-21-03.)

12 (210 ILCS 28/45 new)

13 Sec. 45. Department's annual report. The Department shall
14 include in its annual Long-Term Care Report to the General
15 Assembly a report of the activities of the review teams and
16 Executive Council, the results of the review teams' findings,
17 recommendations made to the Department by the review teams and
18 the Executive Council, and, as applicable, either (i) the
19 implementation of the recommendations or (ii) the reasons the
20 recommendations were not implemented.

21 (210 ILCS 28/50 new)

22 Sec. 50. Funding. Notwithstanding any other provision of
23 law, to the extent permitted by federal law, the Department
24 shall use moneys from fines paid by facilities licensed under
25 the Nursing Home Care Act for violating requirements for
26 certification under Titles XVIII and XIX of the Social Security
27 Act to implement the provisions of this Act. The Department
28 shall use moneys deposited in the Long Term Care
29 Monitor/Receiver Fund to pay the costs of implementing this Act
30 that cannot be met by the use of federal civil monetary
31 penalties.

1 (210 ILCS 28/85 rep.)

2 Section 16. The Abuse Prevention Review Team Act is amended
3 by repealing Section 85.

4 Section 20. The Nursing Home Care Act is amended by
5 changing Section 3-103 as follows:

6 (210 ILCS 45/3-103) (from Ch. 111 1/2, par. 4153-103)

7 Sec. 3-103. The procedure for obtaining a valid license
8 shall be as follows:

9 (1) Application to operate a facility shall be made to the
10 Department on forms furnished by the Department.

11 (2) All license applications shall be accompanied with an
12 application fee. The fee for an annual license shall be \$995.
13 Facilities that pay a fee or assessment pursuant to Article V-C
14 of the Illinois Public Aid Code shall be exempt from the
15 license fee imposed under this item (2). The fee for a 2-year
16 license shall be double the fee for the annual license set
17 forth in the preceding sentence. The fees collected shall be
18 deposited with the State Treasurer into the Long Term Care
19 Monitor/Receiver Fund, which has been created as a special fund
20 in the State treasury. This special fund is to be used by the
21 Department for expenses related to the appointment of monitors
22 and receivers as contained in Sections 3-501 through 3-517 of
23 this Act and for implementation of the Abuse Prevention Review
24 Team Act. At the end of each fiscal year, any funds in excess
25 of \$1,000,000 held in the Long Term Care Monitor/Receiver Fund
26 shall be deposited in the State's General Revenue Fund. The
27 application shall be under oath and the submission of false or
28 misleading information shall be a Class A misdemeanor. The
29 application shall contain the following information:

30 (a) The name and address of the applicant if an
31 individual, and if a firm, partnership, or association, of
32 every member thereof, and in the case of a corporation, the

1 name and address thereof and of its officers and its
2 registered agent, and in the case of a unit of local
3 government, the name and address of its chief executive
4 officer;

5 (b) The name and location of the facility for which a
6 license is sought;

7 (c) The name of the person or persons under whose
8 management or supervision the facility will be conducted;

9 (d) The number and type of residents for which
10 maintenance, personal care, or nursing is to be provided;
11 and

12 (e) Such information relating to the number,
13 experience, and training of the employees of the facility,
14 any management agreements for the operation of the
15 facility, and of the moral character of the applicant and
16 employees as the Department may deem necessary.

17 (3) Each initial application shall be accompanied by a
18 financial statement setting forth the financial condition of
19 the applicant and by a statement from the unit of local
20 government having zoning jurisdiction over the facility's
21 location stating that the location of the facility is not in
22 violation of a zoning ordinance. An initial application for a
23 new facility shall be accompanied by a permit as required by
24 the "Illinois Health Facilities Planning Act". After the
25 application is approved, the applicant shall advise the
26 Department every 6 months of any changes in the information
27 originally provided in the application.

28 (4) Other information necessary to determine the identity
29 and qualifications of an applicant to operate a facility in
30 accordance with this Act shall be included in the application
31 as required by the Department in regulations.

32 (Source: P.A. 93-32, eff. 7-1-03; 93-841, eff. 7-30-04.)

33 Section 25. The Health Care Worker Background Check Act is

1 amended by changing Section 70 as follows:

2 (225 ILCS 46/70)

3 Sec. 70. Centers for Medicare and Medicaid Services (CMMS)
4 grant.

5 (a) In this Section:

6 "Centers for Medicare and Medicaid Services (CMMS) grant"
7 means the grant awarded to and distributed by the Department of
8 Public Health to enhance the conduct of criminal history
9 records checks of certain health care employees. The CMMS grant
10 is authorized by Section 307 of the federal Medicare
11 Prescription Drug, Improvement, and Modernization Act of 2003,
12 which establishes the framework for a program to evaluate
13 national and state background checks on prospective employees
14 with direct access to patients of long-term care facilities or
15 providers.

16 "Selected health care employer" means any of the following
17 selected to participate in the CMMS grant:

18 (1) a community living facility as defined in the
19 Community Living Facility Act;

20 (2) a long-term care facility as defined in the Nursing
21 Home Care Act;

22 (3) a home health agency as defined in the Home Health
23 Agency Licensing Act;

24 (4) a full hospice as defined in the Hospice Licensing
25 Act;

26 (5) an establishment licensed under the Assisted
27 Living and Shared Housing Act;

28 (6) a supportive living facility as defined in the
29 Illinois Public Aid Code;

30 (7) a day training program certified by the Department
31 of Human Services; ~~or~~

32 (8) a community integrated living arrangement operated
33 by a community mental health and developmental service

1 agency as defined in the Community Integrated Living
2 Arrangements Licensing and Certification Act; ~~or~~

3 (9) a long-term care hospital or hospital with swing
4 beds.

5 (b) Selected health care employers shall be phased in to
6 participate in the CMMS grant between January 1, 2006 and
7 January 1, 2007, as prescribed by the Department of Public
8 Health by rule.

9 (c) With regards to individuals hired on or after January
10 1, 2006 who have direct access to residents, patients, or
11 clients of the selected health care employer, selected health
12 care employers must comply with Section 25 of this Act.

13 "Individuals who have direct access" includes, but is not
14 limited to, (i) direct care workers as described in subsection
15 (a) of Section 25; (ii) individuals licensed by the Department
16 of Financial and Professional Regulation, such as nurses,
17 social workers, physical therapists, occupational therapists,
18 and pharmacists; (iii) individuals who provide services on
19 site, through contract; and (iv) non-direct care workers, such
20 as those who work in environmental services, food service, and
21 administration.

22 "Individuals who have direct access" does not include
23 physicians or volunteers.

24 The Department of Public Health may further define
25 "individuals who have direct access" by rule.

26 (d) Each applicant seeking employment in a position
27 described in subsection (c) of this Section with a selected
28 health care employer shall, as a condition of employment, have
29 his or her fingerprints submitted to the Department of State
30 Police in an electronic format that complies with the form and
31 manner for requesting and furnishing criminal history record
32 information by the Department of State Police and the Federal
33 Bureau of Investigation criminal history record databases now
34 and hereafter filed. The Department of State Police shall

1 forward the fingerprints to the Federal Bureau of Investigation
2 for a national criminal history records check. The Department
3 of State Police shall charge a fee for conducting the criminal
4 history records check, which shall not exceed the actual cost
5 of the records check and shall be deposited into the State
6 Police Services Fund. The Department of State Police shall
7 furnish, pursuant to positive identification, records of
8 Illinois convictions to the Department of Public Health.

9 (e) A selected health care employer who makes a conditional
10 offer of employment to an applicant shall:

11 (1) ensure that the applicant has complied with the
12 fingerprinting requirements of this Section;

13 (2) complete documentation relating to any criminal
14 history record, as revealed by the applicant, as prescribed
15 by rule by the Department of Public Health;

16 (3) complete documentation of the applicant's personal
17 identifiers as prescribed by rule by the Department of
18 Public Health; and

19 (4) provide supervision, as prescribed by rule by the
20 licensing agency, if the applicant is hired and allowed to
21 work prior to the results of the criminal history records
22 check being obtained.

23 (f) A selected health care employer having actual knowledge
24 from a source that an individual with direct access to a
25 resident, patient, or client has been convicted of committing
26 or attempting to commit one of the offenses enumerated in
27 Section 25 of this Act shall contact the licensing agency or
28 follow other instructions as prescribed by administrative
29 rule.

30 (g) A fingerprint-based criminal history records check
31 submitted in accordance with subsection (d) of this Section
32 must be submitted as a fee applicant inquiry in the form and
33 manner prescribed by the Department of State Police.

34 (h) This Section shall be inapplicable upon the conclusion

1 of the CMMS grant.

2 (Source: P.A. 94-665, eff. 1-1-06.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.".